Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A. O. No. 110 of 2004

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Bhotia Parao, Haldwani, (Nainital).
..... Appellant.

Versus

(1)Revadhar S/o Sri Joga Dutt,
R/o Bhoraghot, Tanakpur,
District Champawat.
(2)Smt. Narayani Devi W/o Shri Revadhar,
R/o Bhoraghot, Tanakpur,
District Champawat.
(3)Laxman Singh Juyal S/o Shri Karam Singh,
R/o Pithoragarh Road, Tanakpur,
District Champawat.
..... Respondents.

.....

Sri Tanveer Alam Khan, learned counsel for the appellant,
Sri Sudhir Singh, learned counsel for the respondents.

Dated: 31st August, 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Oriental Insurance Company Ltd. under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and award dated 31.01.2004 passed by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Haldwani (District-Nainital) in W.C. Case No.11 of 2002, Smt.Narayani versus Laman Singh Juyal and another, whereby the Insurance Company was directed to pay the amount of compensation alongwith interest Rs. 2,78,102/- to the claimant.

2- Brief facts giving rise to this appeal are that Rakesh-son of the claimant Smt.Narayani Devi was in the employment of Opp.party No.1 as helper in Shaktimaan vehicle No. USX-2219 on the monthly salary of Rs. 3200/-. On 09.06.2001 the said vehicle flown in the water of barrage, due to which Rakesh-deceased also flown in the water and died during the course of employment. His deadbody was not traced despite search. The owner of the said vehicle lodged the F.I.R. on 09.6.2001 in the Police Station Tanakpur and information of the incident was also sent to the Insurance Company. The deceased Rakesh was 21 years old at the time of accident.

3- The Opp.party No.1 owner of the offending vehicle USX-2219 filed his written statement and admitted the employment of the deceased and his salary as also the death of the deceased Rakesh in the said accident on the aforesaid date, time and place. He further alleged that the deceased was under his employment as helper at the time of accident and his monthly salary was Rs. 3200/-. He stated that the said vehicle was insured with the Oriental Assurance Company at the time of accident. The Opp. Party No.2 -Oriental Insurance Company filed its written statement denying all the allegations made in the claim petition and alleged that the owner of the said vehicle has not filed any documentary proof showing that the deceased was under his employment on payment of monthly salary Rs. 3200/-. The learned Workmen's Compensation Commissioner after scrutinizing the evidence adduced by the parties granted the compensation to the claimant accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the learned Workmen's Compensation Commissioner

came to a wrong conclusion by way of assuming the death of deceased Rakesh and awarded the amount without going into the merit of the case. We have gone through the material on record and perused the impugned award. We find that the learned Commissioner on the basis of the evidence of the parties held the deceased Rakesh flown in the water of barrage during the course of employment and died. His deadbody could not be traced despite search. The Village Panchayat Authority had also issued the death certificate dated 16.6.2001 which was produced before the learned Commissioner. We find no reason to interfere with the finding of the learned Commissioner. On the basis of the oral as well as documentary evidence rightly held that the deceased Rakesh aged 21 years died during the course of employment. The learned counsel for the appellant further contended that the learned Commissioner has awarded Rs. 62,519/- as interest on the amount of compensation at the rate of 12% from the date i.e. 10.7.2001 to 10.12.2003 which is excessive and submitted that the rate of interest should be reduced. We find some force in the said contention and hold that the rate of interest as held by the learned Commissioner is excessive which is reduced. The insurance Company shall pay the amount of compensation alongwith interest at the rate of 8% (eight per cent) per annum for the period 10.7.2001 to 10.12.2003. Thus, the claimant is entitled to get amount of compensation i.e. Rs.2,15,583/- alongwith interest at the rate of 8% per annum from 10.7.2001 to 10.12.2003.

5- The appeal is partly allowed. The impugned award is modified accordingly.

(B.S. Verma,J.) **(P.C.Verma,J.)**

31.08.2004
P.Singh